

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WP NO. 10804 OF 2006

13-11-2007

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Between:

K.Satya Veni,
Teki (V), E.G.District and others

....Petitioners

And :

The District Collector,
E.G. District and others

...Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WP NO.10804 OF 2006

ORAL ORDER:

A Draft Declaration u/Sec. 6 of the Land Acquisition Act 1894 ('the Act') was issued by the 1st respondent notifying acquisition of land in an extent of Ac.4.62 cts, in Sy.Nos. 265/1 and 265/2 of Teki Village of Kapileswarapuram Mandal, E.G. District, for the purpose of providing house sites to weaker sections people under "INDIRAMMA Pathakam". The declaration u/Sec. 6 of the Act is impeached by the petitioners herein on the ground that the Draft Declaration u/Sec.6 was issued without a prior Draft Notification u/Sec. 4(1) of the Act and that the invocation of urgency clause and dispensing with the enquiry u/Sec.5-A is arbitrary and irrational.

The Sub Collector, Rajahmundry Sri K. Sesidhar, has filed a counter affidavit on behalf of the 1st respondent claiming authorization to so file an affidavit. It is asserted that on the basis of proposals of the M.R.O., Kapileswarapuram Mandal for Draft Notification and Draft Declaration and invocation of urgency u/Sec. 17(4), the 1st respondent approved Draft Notification and Draft Declaration and these were published in the District Gazette, in the newspapers and in the locality (para-3 of the counter). However, in response to the petitioners' claim that there was no urgency of a magnitude which warrants invocation of the provisions of Sec.17 and dispensing with the salutary provisions of an enquiry under Sec.5A, the counter affidavit laconically states that in view of the urgency enquiry u/Sec.5A has been dispensed with.

Provision of house sites for the weaker sections of the Society is certainly a priority and the Government may fairly treat it as priority Governmental programme. But the urgency is not of such a magnitude as would justify dispensing with the enquiry U/Sec.5A. After all for acquisition of properties some application of mind and deliberation are required, for identifying the lands to be acquired, earmarking of funds for payment of compensation and for identifying the beneficiaries of the housing schemes of the State. All these are not overnight decisions. The claim to urgency cannot be a ritualistic exercise. It must be a rational administrative decision which must be predicated upon a balancing of the countervailing loss to societal values occasioned by the eschewing of the salutary process of enquiry (u/Sec.5A of the Act), after considering the objections to the proposal for acquisition of lands. The proprietorial interests of land owners and the deep sentiments of attachment and commitment to agricultural lands by

agriculturists is also an inherent value of the Indian rural society. No rational administrator can totally debilitate this legitimate concern, by an arbitrary invocation of urgency where none exists.

On the above analysis the casual and ritualistic invocation of urgency and dispensing with the enquiry u/Sec.5A is found to be irrational and unsustainable. Even in the counter there is absolutely no mention that in accordance with the provisions of Sec.17(3)(A) of the Act 80% of the compensation amount had been paid or tendered to be paid to the petitioners who are the acknowledged persons interested in the lands, along with Draft Declaration u/Sec.6 of the Act and on taking of possession. On the contrary it is clearly admitted that no possession was taken and that realizing that this court in similar cases had found fault with the casual invocation of urgency, the respondents are proposing to withdraw the Draft Declaration and are proposing to conduct an enquiry u/Sec. 5A of the Act. Nothing prevented the respondents from withdrawing the Draft Declarations issued u/Sec.4 and 6 of the Act, under the circumstances.

In the circumstances and in the light of the rival pleadings and positions, the writ petition is disposed of as under:

The petitioners' assertion that no notification u/Sec.4(1) of the 4 Act has been issued is seen to be patently misconceived in the light of the clear averment in the counter affidavit of the 1st respondent, which averment has not rebutted by the petitioners.

However, the invocation of urgency in the Draft Declaration u/Sec.4(1) of the Act is irrational and unsustainable. Consequently the Draft Declaration dated 23.5.2006 issued u/Sec. 6 of the Act is unsustainable and is accordingly quashed. It is however open to the respondents to proceed further towards for acquisition, after affording an

opportunity to the petitioners to lodge their objections, if any, u/Sec.5A of the Act. On the petitioners lodging objections within the time stipulated the same should be considered and an appropriate decision taken, which shall be communicated to the petitioners by the competent authority, before proceeding further with the acquisition.

There shall be no order as to costs.

Dt: 13.11.2007
Pvsn

Justice G.Raghuram